

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CASE NO. 04-30983 DDO**

Bruce D. Childs  
SSN XXX-XX-6027  
Brenda Ann Childs  
SSN XXX-XX-6730

**CHAPTER 13 CASE**

Debtor.

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**NOTICE OF OBJECTION TO CONFIRMATION OF PLAN**

TO: Debtor and other entities specified in Local Rule 3015-3.

1. EMC Mortgage Corporation (hereinafter "Secured Creditor") moves the Court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this objection at 10:30 a.m. on June 10, 2004, before the Honorable Dennis D. O'Brien in Courtroom 228 A at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.
3. Any reply to this objection must be filed and delivered not later than 10:30 a.m. on June 9, 2004, which is 24 hours before the time set for the hearing, or filed and served by mail not later than June 7, 2004, which is three days before the time set for the hearing. **UNLESS A REPLY OPPOSING THE OBJECTION IS TIMELY FILED, THE COURT MAY SUSTAIN THE OBJECTION WITHOUT A HEARING.**
4. This Court has jurisdiction over this objection pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed February 23, 2004. The case is

now pending before this Court.

5. This objection arises under 11 U.S.C. § 1322 and Local Rule 3007-1.

6. Debtor is indebted to Secured Creditor in the principal amount of \$43,375.94, as evidenced by that certain Promissory Note dated December 24, 1997, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain Mortgage Deed dated December 24, 1997, executed by Bruce D. Childs and Brenda A. Childs, husband and wife, recorded January 9, 1998, as Document No. 263419, a copy of which is attached hereto as Exhibit "B". The name and address of the original creditor is contained in the attached Exhibit "B".

8. Said plan is objected to on the basis that it is not feasible and that Debtor will not be able to make all payments under the plan and to comply with the plan as contemplated by 11 U.S.C. § 1325 (a)(6).

9. Said plan is also objected to on the basis that Debtor is delinquent in their pre-petition monthly mortgage payments to Secured Creditor for the months of June, 2002 through February, 2004, in the total amount of \$15,099.17, including late charges and that said delinquency existing in Debtor's mortgage loan cannot be cured within a reasonable time as required by 11 U.S.C. § 1322(b)(5). In In re Newton, 161 B.R. 207 (Bkrtcy.D.Minn. 1993), this Court reaffirmed its previous finding that more than 12 months is ordinarily not a reasonable time to cure a default in pre-petition homestead mortgage payments under 11 U.S.C. § 1322(b)(5). The plan, as proposed by Debtor, would require approximately 52 months to complete based on the Proof of Claim filed by Secured Creditor. Therefore, the plan does not comply with the provision of Chapter 13 of the Bankruptcy Code, as contemplated by 11 U.S.C. § 1325(a)(1).

10. The value of the property as scheduled by Debtor is \$80,000.00 subject to Secured Creditor's mortgage in excess of \$58,475.11.

11. The plan, as proposed, is not made in good faith by Debtor.
12. Therefore, it is requested that the Court deny confirmation of Debtor's plan.

Dated this 19th day of May, 2004.

**WILFORD & GESKE**

By /e/ James A. Geske

James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Suite 300  
Woodbury, Minnesota 55125  
651-209-3300  
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

263419

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**ADJUSTABLE RATE RIDER**

(LIBOR 6 Month Index (As Published In The Wall Street Journal) - Rate Caps)

THIS ADJUSTABLE RATE RIDER is made this 24th day of JANUARY, 1997, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to

CENTEX HOME EQUITY CORPORATION

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

303 PARK AVENUE NW  
KATY, TX 77450

(Property Address)

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT THE BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE THE BORROWER MUST PAY.

**ADDITIONAL COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

**A. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

The Note provides for an initial interest rate of 11.680 % The Note provides for changes in the interest rate and the monthly payments, as follows:

**4. INTEREST RATE AND MONTHLY PAYMENT CHANGES****(A) Change Dates**

The interest rate I will pay may change on the first day of JANUARY 2000 and on that day every 6th month thereafter. Each date on which my interest rate could change is called a "Change Date."

**(B) The Index**

Beginning with the first Change Date, my interest rate will be based on an index. The "index" is the average of interbank offered rates for 6 month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent index figure available as of the first Change Date is 11.680. **MULTI-RATE ADJUSTABLE RATE RIDER - LIBOR 6 MONTH INDEX (AS PUBLISHED IN THE WALL STREET JOURNAL) - Single Family - Forward Rate Adjusted Instruments**

FNU (9703)

Form 3125 4/94

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VAP MORTGAGE FORMS - (900521) 7/98

**EXHIBIT** P

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business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new Index that is based upon comparable information. The Note Holder will give me notice of this choice.

**(C) Calculation of Changes**

Before each Change Date, the Note Holder will calculate my new interest rate by adding

6.800 percentage point(s) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

**(D) Limits on Interest Rate Changes**

The interest rate I am required to pay at the first Change Date will not be greater than 13.650 % or less than 11.650 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than TWO AND 000/1000 percentage point(s).

2.800 % from the rate of interest I have been paying for the preceding months. My interest rate will never be greater than 13.650 %.

**(E) Effective Date of Changes**

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

**(F) Notice of Changes**

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given me and also the telephone number of a person who will answer any question I may have regarding the notice.

**B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER**  
Uniform Covenant 17 of the Security Instrument is amended to read as follows:

**Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument. Lender also shall not exercise this option if: (a) Borrower ceases to be subject to Lender's jurisdiction required by

100-138U (8703)

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Initials: 13.6  
Date: 05/19/04

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Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by applicable law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies provided by this Security Instrument without further notice or demand on Borrower.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider.

	
BRUCE D. CHILDS (Seal)	BARBARA A. CHILDS (Seal)
-Borrower	-Borrower
_____ (Seal)	_____ (Seal)
-Borrower	-Borrower
_____ (Seal)	_____ (Seal)
-Borrower	-Borrower
_____ (Seal)	_____ (Seal)
-Borrower	-Borrower

438U (9705)

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Form 3130 6/94

Registration Tax Return at \$ 101.83  
 paid this 7 day of Dec, 1996  
Twilford, M. Bortick  
 County Treasurer  
 Countersigned and properly recorded.  
David A. Bortick  
 County Auditor  
16,440.0680

RECORD AND RETURN TO:  
 CENTER HOME EQUITY CORPORATION  
 P.O. BOX 199000,  
 Dallas, TX 75219-9000  
 343708825  
 PL:1878871

Document No.  
 263419

OFFICE OF COUNTY RECORDER  
 County of Le Sueur, MN



No. of Pages: 11 ☒ Mail Certificate NOT REQD  
☐ Mail Certificate Req'd

I hereby certify that the within instrument was filed in this office  
 for record on 01-08-1998 at 9:00 ☒ AM ☐ PM



David A. Bortick  
 DAVID A. BORTICK  
 COUNTY RECORDER

MORTGAGE

GID: 9417

THIS MORTGAGE ("Security Instrument") is given on DECEMBER 31, 1997  
 The mortgagor is

[REDACTED] AND  
[REDACTED] HUSBAND AND WIFE

("Borrower"). This Security Instrument is given to CENTER HOME EQUITY CORPORATION

which is organized and existing under the laws of THE STATE OF NEVADA  
 address is P.O. BOX 199000, DALLAS, TX 75219

, and whose

("Lender"). Borrower owes Lender the principal sum of  
 FORTY FOUR THOUSAND TWO HUNDRED FIFTY & 00/100

Dollars (U.S. \$

44,250.00 )

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which  
 provides for monthly payments, with the full debt, if not paid earlier, due and payable on  
 JANUARY 1, 2028 and for interest at the yearly rate of

11.650 percent. This Security Instrument secures to Lender: (a) the repayment of  
 the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the  
 payment of all other sums, with interest, advanced under paragraph 7 to perfect the security of this Security

MINNESOTA Single Family-FHMA/FHLMC UNIFORM INSTRUMENT

FORM 940 (REVISED) 07/93

Form 940 9/93

Amended 12/93

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1997 MORTGAGE FORMS - 000001-000

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EXHIBIT B

EMC  
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Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in LE SUROS

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LOT EIGHT (8) AND THE WEST HALF OF LOT SEVEN (7), BLOCK FOURTEEN (14),  
VILLAGE OF ELSTIAN, FORMERLY CALLED LOGAN, LE SUROS COUNTY, MINNESOTA.

County, Minnesota:

which has the address of 203 PARK AVENUE NE, ELSTIAN  
Minnesota 55020 (Zip Code) ("Property Address");

. (Show, City),

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

**BORROWER COVENANTS** that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

**THIS SECURITY INSTRUMENT** contains uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

**UNIFORM COVENANTS.** Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayments and late charges due under the Note.
2. **Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attach priority over this Security Instrument as a lien on the Property; (b) yearly household payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. These sums are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the Federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. Section 2601 et seq. ("RESPA"), unless another law that applies to the Funds sets a lower amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lower amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

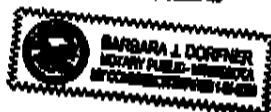
The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentally, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an





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STATE OF MINNESOTA, HENNEPIN

741700525  
County of:On this 24th day of December, 1997, before me appeared  
BRUCE D. CHILDS AND BRENDA A. CHILDS, HUSBAND AND WIFEpersonally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that  
they executed the same as their free act and deed.

*Barbara J. Dornier*  
Notary Public  
My Commission Expires:

This instrument was prepared by DENNIS STUMP  
CENTEX HOME EQUITY CORPORATION, 2726 N. Harwood, Corp. Closing, 3rd Floor, Dallas, Texas

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 13 CASE**

Bruce D. Childs  
SSN XXX-XX-6027  
Brenda Ann Childs  
SSN XXX-XX-6730

**CASE NO. 04-30983 DDO**

Debtor.

**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

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Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on May 19, 2004, I served the annexed Notice of Objection to Confirmation of Plan and proposed Order Denying Confirmation of Plan to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Bruce D. Childs  
Brenda Ann Childs  
PO Box 6  
Elysian, MN 56028

Jasmine Z. Keller  
12 South 6th Street, Suite 310  
Minneapolis, MN 55402

Ian Traquair Ball  
12 South 6<sup>th</sup> Street, Suite 326  
Minneapolis, MN 55402

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4th Street  
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 19th day of May, 2004.

/e/ Diana Waletzko  
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**ORDER DENYING CONFIRMATION  
OF PLAN**

Bruce D. Childs  
SSN XXX-XX-6027  
Brenda Ann Childs  
SSN XXX-XX-6730

Debtor.

**CASE NO. 04-30983 DDO**

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This Chapter 13 Case came on before the Court on June 10, 2004, for hearing on Debtor's plan of debt adjustment. Appearances were as noted in the record. Upon the record made at hearing, and all other files and records in this case,

IT IS HEREBY ORDERED that confirmation of Debtor's plan of debt adjustment, as filed February 23, 2004, is denied.

Dated: \_\_\_\_\_  
Judge of Bankruptcy Court